THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 16084 OF 2005

Dated: 21-11-2005

Between:

Dr. B.Jagadishwar …Petitioner

A N D

1. NTR University of Health Sciences,

A.P. Vijayawada and another

…Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 16084 OF 2005

O R D E R :

1. This writ petition has been filed by Dr. B.Jagadishwar with a prayer to issue a writ more particularly one in the nature of writ of mandamus declaring the action of the respondents in not including the marks obtained in Basic Sciences Paper-1 for

arriving aggregate 50% marks under the head of theory as illegal and unjust and consequently direct the respondents to include the marks obtained in Basic Sciences-Paper-1 and extend 5 grace marks and declare the petitioner as passed in M.D. Pediatrics.

2. The petitioner joined the post-graduate course in M.D. Pediatrics. M.D. Pediatrics is a three years post graduate course being conducted by N.T.R. University of Health Sciences-1st respondent in terms of the Post Graduate Medical Education Regulations 2000 (for short "The Regulations")). As per the regulations, the examination pattern comprises theory, clinical, practical and oral. The theory papers consists of Basic Science-Paper-1, New Born and Nutrition Paper-II, Infectious Diseases Paper-III and Diseases of Infancy and Childhood-Paper-III. As per the regulations, theory examinations shall be held separately earlier than clinical and practical examinations. A candidate shall secure not less than 50% of the marks in each paper to declare him as pass. The 1st respondent-University has been conducting 1st paper Basic Medical Sciences at the end of the first year. Out of 400 marks allotted for four theory papers, the petitioner secured 197 marks. If grace marks are added, he is to be declared as passed. The 1st respondent University has not added marks secured by the petitioner in paper-I i.e. Basic Medical Sciences to arrive aggregate percentage and therefore, the action of the respondents is in violation of Regulation 14 (iv) (b) of the Post Graduate Medical Education Regulations, 2000.

3. Heard learned counsel for the Petitioner and learned Standing Counsel appearing for the 1st respondent-University and learned Standing Counsel appearing for the 2nd respondent-Medical Council of India.

4. Learned counsel appearing for the petitioner submits that post graduate medical course consists of four papers and therefore, the action of the 1st respondent University in not taking into consideration the marks secured in Basic Medical Sciences-Paper-I in arriving at 50% aggregate, is arbitrary and in violation of the Rules made by the Medical Council of India in exercise of powers conferred by Section 33 r/w Sec. 20 of Indian Medical Council Act, 1956. He made copious references to the regulations called the Post Graduate Medical Education Regulation 2000. He laid much stress on Regulation 14 of the Regulations, which

deals pattern of examinations. A further submission has been made by him that the 1st respondent university has changed its policy w.e.f. 5th October, 2005 so as to bring the policy in conformity with the regulations passed by the Medical Council of India and as per the revised policy the marks secured in all the four theory papers are added for arriving aggregate percentage.

5. The learned Standing Counsel appearing for the 1st respondent-University submits that the Regulations are silent with regard to adding of marks secured in all the four theory papers to arrive at the aggregate percentage and therefore, the University is justified in not taking into account the marks secured in Basic Medical Sciences Paper-I while arriving aggregate percentage. He further submits that the policy decision of the University with regard to academic matters cannot be subject to judicial scrutiny of the court in exercise of powers under Art.226 of the Constitution of India.

6. It is no more in dispute that the post-graduate medical course comprises four papers, of which Basic Medical Sciences is Paper 1. As per the regulations, a candidate shall secure not less than 50% marks in each head, which includes theory and practical examinations including clinical and viva voce. For better understanding I may refer the relevant portion of Regulation 14 (4)(b) and it is thus:

> "*(b) Theory:*
>
> i. *There shall be four theory papers.*
>
> ii. *Out of these one shall be of Basic Medical Sciences and one shall be of recent advances.*
>
> iii. *The theory examinations shall be held sufficiently earlier than the clinical and practical examination, so that the answer books can be assessed and evaluated before the start of the clinical/practical and oral examinations:*
>
> *Provided that after five years from the commencement of these regulations, there shall be one theory paper of multiple choice questions, unless any institution wants to have such paper earlier.*
>
> *c) Clinical/Practical and Oral*

i. *Clinical examination for the subjects in Clinical Sciences shall be conducted to test the knowledge and competence of the candidates for undertaking independent work as a specialist/teacher for which candidate shall examine a minimum one long case and two short cases.*

ii. *Practical examination for the subjects in Basic Medical Sciences shall be conducted to test the knowledge and competence of the candidate for making valid and relevant observations based on the experimental/laboratory studies and his ability to perform such studies as are relevant to his subject.*

iii. *The oral examination shall be thorough and shall aim at assessing the candidate's knowledge and competence about the subject, investigative procedures, therapeutic technique and other aspects of the speciality which form a part of the examination.*

A candidate shall secure not less than 50% marks in each head of passing which shall include (1) Theory, (2) Practical including clinical and viva voce examinations."

7. A plain reading of the above Regulation indicates that minimum pass mark in each paper is 50%. The Regulation does not indicate that a candidate who secured 50% aggregate shall be declared as pass. Adding of marks secured by candidate in each paper is left to the discretion of 1st respondent University to arrive aggregate percentage. Therefore, the decisions of the University to take the marks secured by the candidate in Part- II, which comprises three papers cannot be said to be in violation of the Regulation. What the regulation say is that a candidate shall secure not less than 50% in each paper. To give some benefit to candidate, the 1st respondent-University has issued guidelines to add marks secured by a candidate in part- II which comprises three papers to arrive at aggregate and in case the aggregate is not less than 50%, he is to be declared as passed. Therefore, it cannot be said that the guidelines of the 1st respondent University to take into account the marks secured by the candidate in Part-II only, which consists of three papers are in contravention of the Regulations. Since, the guidelines of the 1st respondent-University forms part of its policy, the same is not susceptible to judicial scrutiny

under Article 226 of the Constitution of India.

8. Therefore, the writ petition fails and it is accordingly dismissed. No order as to costs.

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Justice B.Seshasayana Reddy

21st November, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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